

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-217383

DATE: September 5, 1985

MATTER OF: Frank C. Sanders

DIGEST: A Forest Service firefighter was authorized reimbursement on an actual subsistence expense basis in lieu of a per diem rate of \$5. The firefighter argues that the Federal Travel Regulations, paragraph 1-8.1d, authorize reimbursement on an actual subsistence basis only where unusual circumstances exist. The Forest Service believes that unusual circumstances exist because the firefighters were working in remote areas where food and lodging is not normally available and is provided by the Forest Service. It believes that reimbursement on an actual subsistence expenses basis would ensure that only those employees that actually incurred expenses would be reimbursed and cited further administrative savings realized by a reduction in the number of travel vouchers that would have to be processed. The Forest Service may not authorize the firefighters actual subsistence expenses since FTR paragraph 1-8.1c provides that actual subsistence expenses may be authorized where the authorized per diem would be insufficient to cover expected expenses. Therefore, the firefighter may be paid the claimed per diem.

The issue presented is whether an agency may authorize actual subsistence for employees in a travel status where the per diem would be adequate to cover expected expenses.^{1/} We read the applicable regulations and the legislative history as intending that actual subsistence expenses be authorized only when the employee travels to a high-cost geographic area or where due to the unusual circumstances of the travel per diem would not be sufficient

^{1/} The request was submitted by C. E. Tipton, an authorized certifying officer of the Forest Service, United States Department of Agriculture.

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to cover expected expenses. Therefore, we hold that the agency may not authorize reimbursement of actual subsistence expenses in these circumstances.

The Forest Service states that several of its regions have authorized reimbursement on an actual subsistence basis instead of on a per diem basis whenever an employee is assigned to firefighting duties. The Forest Service believes that this is proper because most fires occur in remote areas where commercial lodging and meals are not available. Thus, the Forest Service provides lodgings and meals to most of the firefighters. The Forest Service indicates that a cost savings results from reimbursing only actual expenses because only those employees who have out-of-pocket expenses are paid. Finally, the Forest Service indicates that administrative benefits accrue to the agency because it is required to process a smaller number of claims since many firefighters have no out-of-pocket expenses. The use of a special per diem rate under paragraph 1-7.3 of the Federal Travel Regulations (May 1973) incorp. by ref., 41 C.F.R. § 101-7.003 (1980), was considered and rejected because it would either increase administrative costs or not fairly reimburse employees for incurred expenses in all situations.

The Forest Service forwarded a voucher submitted by one of the firefighters, Mr. Frank C. Sanders, Smokejumper Superintendent. Mr. Sanders reads FTR paragraph 1-8.1 as authorizing actual subsistence expenses only when the agency determines that the per diem otherwise allowable is inadequate--i.e., less than sufficient to cover expenses incurred. It does not in his opinion authorize actual subsistence for the purpose of reducing administrative costs. Mr. Sanders has submitted four vouchers totaling \$174.50, representing his entitlements computed under the rules applicable to paying the per diem allowance. He indicates that if he is entitled to reimbursement only on

an actual expenses basis, he will obtain information with respect to such expenses including the meals he was required to purchase.^{2/}

The conditions under which an agency may authorize actual subsistence expenses are set forth in paragraph 1-8.1 of the Federal Travel Regulations, supra. An employee's entitlement to actual subsistence expenses is normally contingent upon entitlement to per diem and an agency determination that the authorized maximum per diem allowance would be inadequate to cover the actual and necessary expenses of the traveler. FTR para. 1-8.1a. It is in this context that subparagraph 1-8.1c authorizes actual subsistence expenses due to "unusual circumstances of the travel assignment." That subsection reiterates that actual subsistence expenses may be authorized "when it is determined that the maximum per diem allowance * * * would be inadequate * * *." The clear intent of this phrase is reinforced by subsequent rules. One such rule states that actual subsistence may not be authorized where the expected expenses exceed the authorized per diem by only a small amount or where inflated costs are common to all travelers. Additional examples of unusual circumstances are provided in subparagraph 1-8.1c(3). The common thread in all of the examples is that the cost of lodging absorbs practically all of the authorized per diem.

The plain meaning of this regulation is that the term "unusual circumstances" covers only certain situations where the authorized per diem is not sufficient to cover expected expenses. Reducing administrative costs is not one of the examples listed as an "unusual circumstance." Further, in view of the legislative history of the statute authorizing reimbursement of actual subsistence expenses, as discussed below, we do not believe the statute contemplated payment of actual subsistence expenses instead of per diem in these circumstances.

^{2/} The Forest Service states that computed under the standard per diem rate, Mr. Sanders' daily entitlement would be \$5 (zero lodging costs plus \$23, minus \$6 for each meal provided by the Government).

The regulatory provision discussed above implements 5 U.S.C. § 5702(c) (1982). That subsection provides:

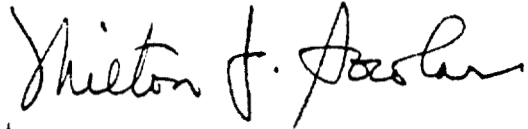
"Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$75 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (1) due to the unusual circumstances of the travel assignment, or (2) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title."

The language of this subsection is straightforward. Actual subsistence may be authorized only where the per diem is determined to be inadequate for one of the two prescribed reasons--travel in a high-rate geographical area or where the travel assignment involves unusual circumstances. Concerning the latter, the legislative history shows that Congress was concerned only about situations requiring expenditures well in excess of an employee's per diem entitlements. For example, the House Report accompanying the bill states that the authority to authorize actual subsistence in unusual circumstances is intended to be used "in a very limited number of situations," noting that occasionally employees are required to travel on assignments that require "personal expenditures well in excess of the reimbursement which would be obtained at the [authorized] per diem rates." H.R. Rep. No. 604, 89th Cong., 1st Sess. (1955), reprinted in 1955 U.S. Code Cong. & Ad. News 2547, 2549-2550.

On the basis of the above analysis, we find that the regulations do not provide and the statute does not contemplate reimbursement of actual subsistence expenses where the expected expenses would be far less than the

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otherwise authorized per diem. Accordingly, the Forest Service may not authorize reimbursement of actual subsistence expenses under FTR paragraph 1-8.1 in this situation. Since the Forest Service did not fix a per diem rate for firefighters, the travel vouchers of Mr. Sanders should be processed as submitted using the rules applicable to payment of per diem when lodging costs are not incurred and meals are furnished by the Government. In that connection it should be noted that in addition to meals and lodgings the per diem allowance is intended to cover miscellaneous expenses not specifically identified. While it may be that firefighters do not incur the usual miscellaneous expenses this element of cost should not be overlooked in fixing a specific per diem rate.


for Comptroller General
of the United States